

No. _____

05-597 NOV 10 2005

In The
Supreme Court of the United States

OFFICE OF THE CLERK

RUSSELL LYNE RAMSEUR,

Petitioner,

v.

STATE OF MARYLAND,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF MARYLAND

PETITION FOR WRIT OF CERTIORARI
WITH APPENDIX

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QUESTION PRESENTED

- I. SHOULD THE PETITIONER'S MOTION TO SUPPRESS EVIDENCE HAVE BEEN GRANTED WHERE THE STATE ATTEMPTED TO JUSTIFY THE ARREST AND SEARCH OF PETITIONER ON THE BASIS OF AN OUTSTANDING ARREST WARRANT, BUT THE STATE FAILED TO PRODUCE THE WARRANT AT A HEARING ON THE MOTION TO SUPPRESS?

TABLE OF CONTENTS

	<u>Page</u>
QUESTION PRESENTED	i
TABLE OF AUTHORITIES.....	iii
OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE.....	3
REASON FOR GRANTING THE PETITION	6
I. THIS COURT HAS NEVER DIRECTLY ADDRESSED WHETHER THE STATE HAS THE BURDEN OF ESTABLISHING THE LAWFULNESS OF AN ARREST PURSUANT TO AN ARREST WARRANT BY INTRODUCING THE WARRANT AT A HEARING ON A MOTION TO SUPPRESS EVIDENCE.....	6
CONCLUSION.....	8
APPENDIX	

TABLE OF AUTHORITIES

	<u>Page(s)</u>
<u>Andresen v. Maryland,</u> 427 U.S. 463	7
<u>Bumper v. North Carolina,</u> 391 U.S. 543 (1968)	7
<u>Colorado v. Connelly,</u> 479 U.S. 157 (1986)	7
<u>Franks v. Delaware,</u> 438 U.S. 154 (1978)	8
<u>Lego v. Twomey,</u> 404 U.S. 477 (1972)	8
<u>Medina v. California,</u> 505 U.S. 437 (1992)	7
<u>Nix v. Williams,</u> 467 U.S. 431	7-8
<u>United States v. Matlock,</u> 415 U.S. 164 (1974)	8
 CONSTITUTIONAL PROVISIONS	
U.S. CONST. Amend. IV	2, 6
U.S. CONST. Amend. XIV	2, 6

STATUTE

28 U.S.C. 1254(1).....	1
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OPINIONS BELOW

The Circuit Court for Prince George's County, Maryland issued an order denying the petitioner's Motion to Suppress Physical Evidence on April 4, 2003. A copy of that opinion is attached hereto as appendix C.

The Court of Special Appeals of Maryland issued an unreported opinion affirming the petitioner's conviction on June 13, 2005. That opinion attached hereto as appendix B.

The Court of Appeals of Maryland denied the petitioner's petition for writ of certiorari to the Court of Special Appeals of Maryland by order dated August 12, 2005. A copy of that order is attached hereto as appendix A.

JURISDICTION

The Court of Appeals of Maryland denied the petitioner's writ of certiorari on August 12, 2005. The petitioner invokes this Court's jurisdiction under 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fourth Amendment to the United States Constitution

Unreasonable searches and seizures

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Section 1 of the Fourteenth Amendment to the United States Constitution

Sec. 1 [Citizens of the United States.]

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; not shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

The issues in this matter arise from a hearing on the petitioner's motion to suppress evidence. The State called a single witness at the hearing. Sergeant Charles Magee testified that on October 25, 2002 at 10:47 p.m. he was seated in his marked patrol car at the intersection of Silver Hill Road and Route 4 in Prince George's County. A vehicle he described as a "Lincoln" pulled past Magee on the left and stopped for the traffic light. Sergeant Magee became interested in the vehicle because the occupant was listening to loud rap music. Magee did not observe the vehicle commit any traffic violation.

Magee checked the vehicle's registration plate through the Datalux mobile data computer in his cruiser. The check included a registration check, a stolen check, and a criminal history of the registered driver. The check indicated that the registered owner of the vehicle had an open warrant for a violation of probation.

The computer information identified the registered owner of the vehicle as Russell Ramseur. The computer did not provide a photograph of Ramseur, however, it did provide a "general description." He was described as a "[b]lack male, approximately five eleven...like 190 pounds." Magee admitted that he "couldn't tell from that description if the person actually driving the car was, in fact, Russell Ramseur."

Magee contacted his dispatcher. He asked her to verify the warrant because "oftentimes they are old, so we have to verify them to make sure they're still active." The dispatcher indicated that the warrant was still active.

Magee then conducted a traffic stop on the Lincoln. The vehicle pulled over in the right lane of Silver Hill Road, and Magee approached. He asked the driver for his license and registration. The driver produced the requested documents. The name and physical characteristics on the driver's license matched those provided by the computer.

When backup officers arrived, Magee asked Ramseur to step out of the vehicle. Magee advised Ramseur that he was being arrested "for a retake order on violation of probation." Ramseur was placed in handcuffs.

Officers then performed a search of Ramseur's vehicle. They searched both the "interior portion of the vehicle and the trunk." They recovered a quantity of narcotics in a bag beneath the driver's seat. They also recovered a Pyrex pot and scales in the rear passenger area.

Following Magee's testimony, the State introduced a copy of the docket entries from case number CT 96-0112D. The court agreed to take judicial notice of that record. The record was not a warrant, but was merely a computer record of various court proceedings in the case. **The State did not attempt to**

introduce any arrest warrant into evidence at the hearing on the motion to suppress.

The defense called Russell Ramseur. He testified that he received a sentence from Judge Woods in CT 96-0112D of 15 years all suspended but 5 mandatory. He was placed on a 4 year period of probation. The defense introduced into evidence the order of probation.

After his release from prison, he reported to the probation office in Upper Marlboro. He was advised that his probation had been transferred to the District of Columbia. Ramseur then began reporting to Anthony Turner in the probation and parole department of the District of Columbia.

Ramseur subsequently committed a crime in the District of Columbia for which he received a 2 year sentence of incarceration to be followed by a period of probation. As a result of that offense, Ramseur received a violation of probation notice in CT 96-0112. On March 22, 2002, Ramseur appeared before Judge Woods for a hearing on the violation of probation. At that time, Ramseur was placed back on a period of probation for one year to run concurrent with his probation in the District of Columbia. His probation in CT 96-0112 was transferred to the District of Columbia.

Ramseur subsequently complied with the terms of his probation. He reported to his probation officer in the District of Columbia as required. The defense introduced reporting slips which corroborated this

testimony. Ramseur never received any notice that he was in violation of probation.

At the close of the evidence at the hearing on the motion to suppress, petitioner argued that the State failed in its burden to prove that there was probable cause for the arrest. The court took the petitioner's motion under advisement. By order dated May 22, 2004, the trial court denied the motion.

REASON FOR GRANTING THE PETITION

- I. THIS COURT HAS NEVER DIRECTLY ADDRESSED WHETHER THE STATE HAS THE BURDEN OF ESTABLISHING THE LAWFULNESS OF AN ARREST PURSUANT TO AN ARREST WARRANT BY INTRODUCING THE WARRANT AT A HEARING ON A MOTION TO SUPPRESS EVIDENCE.

The issue in the case at bar was whether the State failed to meet its burden of proof as to the legality of the petitioner's arrest. The State attempted to justify the petitioner's arrest on the basis of an outstanding warrant for a violation of probation. However, the State did not produce or introduce any warrant into evidence at the hearing on the motion to suppress.

In the lower courts, the petitioner argued at all stages of the proceedings that the State failed in its burden to prove that the search incident to arrest was lawful under the Fourth and Fourteenth Amendments to the U.S. Constitution. Defendant relied, in part,

upon the decision of Bumper v. North Carolina, 391 U.S. 543 (1968).

When a criminal defendant challenges the warrant which was the basis for his arrest, the State should be required to produce the warrant. This Court has not addressed this issue directly. However, in Bumper v. North Carolina, *supra.*, this Court stated in *dicta* that the prosecution has the burden of proving the lawfulness of a search. Bumper, *supra.*, at 549. The Court further stated that, where that search is based upon a warrant, the State must show that there was, in fact, a warrant, and that the warrant was valid. Bumper, *supra.*, at 549-550. This Court reasoned that a reviewing court must be able to determine from the evidence the conditions under which a warrant was issued and whether it was based upon probable cause. Bumper, *supra.*, footnote 15 at 550. *See also*, Andresen v. Maryland, 427 U.S. 463, 478, note 9 (where this Court found it unnecessary to address whether the prosecution failed in its burden of proof by not introducing search warrants because the terms and language of the warrants were discussed extensively during the hearing on the motion to suppress).

Certiorari is required in this case to clarify the allocation of the burden of proof in a hearing to suppress the fruits of a search incident to an arrest pursuant to a warrant. This Court has allocated the burden of proof on the State where it furthers the objective of "detering lawless conduct by police and prosecution." Medina v. California, 505 U.S. 437, 452 (1992). *See, e.g.*, Colorado v. Connelly, 479 U.S. 157, 168-169 (1986) (waiver of Miranda rights); Nix v.